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IN THE

Supreme Court of the United States

October Term, 1972

No. .....

MAX OFFENBERG and MARIE OFFENBERG, husband and wife,

Petitioners,

vs.

THE STATE OF CALIFORNIA; THE COUNTY OF SAN BERNARDINO; G. LEON GREGORY, Tax Collector of the County of San Bernardino; ORVILLE K. DOYLE and LEONA M. DOYLE, husband and wife,

Respondents.

Petition for a Writ of Certiorari to the California Court of Appeal, Fourth Appellate District, Division Two.

Petitioners, Dr. and Mrs. Max Offenberg, respectfully pray for Writ of Certiorari to the California Court of Appeal, Fourth Appellate District, Division Two, to review the judgment thereof holding that *notice* to a property owner (of the government's intention to sell his property for taxes) given according to statutory ritual (by directing the notice to a known incorrect address appearing on the assessment roll) constitutes adequate notice even when the government has knowledge of the property owner's correct address.

Preliminary Statement.

This case is of profound importance in determining the scope of the government's power to divest a citizen of his title to property.

The issue in this case is whether a county, when conducting a proceeding which may result in the termination of a citizen's title to property, may disregard the constitutional prerequisites of due process by failing to give a known owner of the property adequate notice of its intended action.

The California Court of Appeal, Fourth Appellate District, Division Two, without addressing itself to this important constitutional question, merely affirmed the judgment of the lower court against petitioners. The written opinion of the court is unreported in the official California reports but is set out hereinafter in Appendix "A". The California Supreme Court denied a petition for hearing in this matter and remittitur issued on August 2, 1972. The jurisdiction of this Court is invoked under 28 U.S.C., Secs. 1257(3) and 2101.

Grounds for Petition.

The granting of this writ is necessary in order:

1. To settle important questions of constitutional law with respect to the giving of notice (of a tax sale) as a fundamental requirement of due process under the Fourteenth Amendment to the *United States Constitution;* and
2. To prevent a gross injustice from being perpetrated upon petitioners by having their property summarily taken from them without notice and, therefore, without due process of law.

Question Presented for Review.

Did the government illegally deprive petitioners of their property and deny them due process of law when it sold their property for delin-

quent taxes without first giving them adequate notice of its intended action and an opportunity to redeem the property prior to sale?

Statement of Case.

By this action, petitioners, Dr. and Mrs. Max Offenberg, seek to cancel a tax deed and to quiet title to a parcel of property located at Big Bear, California. The property is improved with a beautifully furnished mountain home which petitioners have owned since January of 1963.

At the time of the purchase of this property, as well as at all other times material hereto, the address of petitioners was 127 Utah Street, Los Angeles, California, the site of a hospital owned by them. It is at this address that petitioners have regularly and continuously received their mail for the past 25 years. Although petitioners sold the hospital in October, 1969, they continued to regularly receive their mail at that address through February, 1970, and even later.

Through an error on the part of the taxing officials of San Bernardino County (which error was perpetuated by the county over a period of seven years), petitioners never received a tax bill on the property and as a result thereof it was sold (again, without notice to petitioners) for delinquent taxes in January 1970. These omissions of notice occurred by reason of the fact that an incorrect address (that of the former owner of the property who lived in Arizona) was erroneously listed by the taxing officials on the county tax records as that of petitioners—even though the correct address of the petitioners was within their knowledge or readily available to them. Petitioners' true address was specifically noted on the grant deed which

conveyed the property to them and a copy of this deed was physically in the possession of the county taxing officials, as well as in the county recorder's office. At least two months prior to the sale, the tax collector examined the grant deed and noted petitioner's correct address thereon and transcribed the same to his records. The tax collector even highlighted petitioner's correct address on his records by using red ink in his transcription. The county also maintained an alphabetical listing of all property owners in the county together with their addresses and Mrs. Offenberg's name appeared on that list followed by her Los Angeles address.

For seven years, the tax collector sent the tax bills on the property to the erroneous address in Arizona and each of these bills was returned to his office unclaimed and retained in his file.

Petitioners were totally unaware of the county's error in transcribing an incorrect address on the assessment records in 1963 and the years thereafter and thus, were not in a position to call the error to the attention of the county officials. Moreover, in the course of his busy work as a physician, the doctor did not realize that he had not been receiving tax bills on this property. This is readily understandable since he never personally handled the payment of such bills, rather delegating that task to his auditor.* The doctor assumed, and reasonably so, that all tax bills on the property had been timely received and paid. No tax bill,

*Petitioners owned approximately 8 to 10 other parcels of property located in Los Angeles and San Bernardino Counties. Because of the exigencies of his profession as a physician, Dr. Offenberg employed an auditor to manage his business affairs relating to those properties and entrusted to him the duty of paying the taxes levied thereon.

however, was actually received by petitioners or their auditor either in 1963 or in any other year subsequent thereto. As a result thereof, the property became tax delinquent and was subsequently deeded to the State.

Approximately three weeks prior to the tax sale, the tax collector sent a notice of sale (which contained a defective description of the property to be sold) to petitioners, but it was directed to the incorrect address of the former owner in Arizona and as might be expected, this notice was promptly returned to the tax collector as undeliverable. Other attempts by the county to give notice to petitioners either proved ineffective or were jurisdictionally defective* and petitioners were *never* informed, formally or informally, that they could pay the back taxes and redeem their property or that it was to be sold for delinquent taxes. Published notice of the sale in the newspaper published at the county seat likewise proved defective because of an error in the description of the property to be sold.

Ten days prior to the sale, the assessment roll of the county was corrected to reflect petitioners' true address and the tax collector admitted that he was fully aware of this information. Nevertheless, he proceeded to sell the property without giving the statutory notice required by law.

Considering these circumstances, the State of California filed a disclaimer of any interest in the property adverse to the petitioners. The other respondents

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*The county claimed that two "courtesy" notices were mailed to petitioners at their correct address but the record is clear that no such notices were ever received by the petitioners. Neither the California Court of Appeal nor the respondents have contended that these notices met the constitutional and statutory requirements of notice.

(the County of San Bernardino and respondents Doyle, the purchasers at the tax sale), however, defended the action taken by the taxing officials and the Doyles filed a cross-complaint seeking to quiet title to the property in their name. At the trial of this case, the lower court sustained the tax deed, denied the relief sought by petitioners and entered judgment quieting title to the property in the names of respondents Doyle. The California Court of Appeal affirmed the judgment and the California Supreme Court denied a hearing.

REASONS FOR GRANTING THE WRIT.

I.

THE FAILURE OF THE GOVERNMENT TO GIVE NOTICE OF TAX SALE DEPRIVED PETITIONERS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

Notification is a fundamental requirement of due process and under the constitution, before the government has jurisdiction to conduct a tax sale, it must give notice of its intended action to the owner of the property to be sold. *Mullane v. Central Hanover Bank* (1950) 339 U.S. 306, 70 S.Ct. 652, 657, 94 L.Ed. 865; *Schroeder v. City of New York* (1962) 371 U.S. 208, 83 S.Ct. 279, 282; *Dohrmann Co. v. Security Savings and Loan Assn.* (1970) 80 Cal.App.3d 664, 87 Cal.Rptr. 792; *Sinai v. Mull* (1947) 80 Cal.App.2d 277, 181 P.2d 924.

In *Lichfield v. County of Marin* (1955) 130 Cal. App.2d 806, 280 P.2d 117, the court held at page 121 that:

> "*The questions of notice and due process are so inextricably part and parcel of each other* that there could be no due process without the sovereign following some procedure which according to common experience should reasonably give notice of impending interference with ownership or right to possession." (Emphasis added).

and again on page 120, that:

> ". . . under the provisions of both the federal and state Constitutions property may not be taken from

the individual owner without due process of law. *In passing . . . statutes the state legislature cannot arise above this constitutional limitation.*" (Emphasis added).

In California, notice of a tax sale must be given both by publication and registered mail (Revenue and Taxation Code, Sections 3701 and 3702).* Both kinds of notice are equally essential to the validity of any tax sale. *Healton v. Morrison* (1912) 162 Cal. 668, 124 Pac. 240, 241.

In California, as elsewhere, the rule is firmly established that every essential step leading to the execution of a tax deed must be strictly followed or the deed executed pursuant thereto will be void. *Biaggi v. Phillips* (1942) 50 Cal.App.2d 92, 122 P.2d 619; *Numitor Gold Mining Co. v. Katzer* (1927) 83 Cal.App. 161, 256 Pac. 464; *Lewis v. Tulare Rec. Dist. 749* (1922) 56 Cal.App. 52, 204 Pac. 421; and *Holland v. Hotchkiss* (1912) 162 Cal. 366, 123 Pac. 258. As noted above:

> ". . . [I]t has become a fixed rule of property in California that in proceedings to sell property for unpaid taxes, no requirement of the statute can be disregarded, and that parties who purchase properties at tax sales acquire the title to the property purchased only if all the proceedings for the levy of taxes and the sale are in strict conformity to the requirements of the various statutes governing the same." *Biaggi v. Phillips* (1942) 50 Cal.App. 2d 92, 122 P.2d 612 at 624.

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*All sections referred to herein are found in the California Revenue and Taxation Code unless otherwise specially indicated.

A. Notice to Petitioners at an Incorrect Address in Arizona Did Not Meet Either the Statutory Requirements of Notice or the Requirements of Due Process.

Section 3701 provides in relevant part that:

> ". . . not less than 21 nor more than 28 days, before the proposed sale, the tax collector *shall* send notice by *registered mail* of the intended sale to the last assessee of . . . the property *at his last known address* . . ." (Emphasis added).

In other words, the statute requires that notice of sale must be given by the tax collector (1) not less than 21 nor more than 28 days before the proposed sale; (2) by registered mail; (3) to the last assessee of the property to be sold; and (4) at his last known address.

The requirement that the notice be sent by registered mail is to insure that the owner has *personal* notice of the intended sale of his property. *Numitor Gold Mining Co. v. Katzer* (1927) 83 Cal.App. 161, 256 Pac. 464, 466. In that case the court held that the purpose of such mailing of notice:

> ". . . is to afford *personal service* on the owner . . . and enable him to redeem the property . . . "Service of this notice by mail is also jurisdictional, and where it is returned prior to the sale without having been delivered, it is an insufficient service of notice, and a deed executed pursuant to such a defective notice is void." (Emphasis added).

In this case, the tax collector, approximately three weeks before the sale, mailed to petitioners at an erroneous address in Arizona a notice of intended sale of their property. This notice was sent by registered mail with a request for a return receipt and as might be

expected, it was promptly returned to the tax collector as undeliverable. Enclosed in the notice was a copy of the newspaper publication which contained an incorrect description of the property intended to be sold. The description published in the newspaper included not only the property intended to be sold but also a vacant parcel adjacent thereto which had been previously withdrawn from the sale by the tax collector.

This notice failed to comply with several of the substantive requirements of notice and thus was invalid. It was defective in the following particulars:

1. It was not sent to the petitioners at their "last known address."
2. It was never received by petitioners.
3. It contained an incorrect description of the property intended to be sold.

1. Failure to Send Notice to Petitioners at Their "Last Known Address" Is Fatally Defective.

Both Section 3701 and the standards of due process require that notice of intended sale be given to the owner at his "last known address." The "last known address" is the last or most current address of the delinquent taxpayer either *known* to or *ascertained* by the tax collector prior to the sale. *Smith v. Furlong* (1911) 160 Cal. 522, 117 Pac. 527; *Wright v. Anglo-Californian Bank* (1911) 161 Cal. 500, 119 Pac. 651; *Krotzer v. Douglas* (1912) 163 Cal. 49, 124 Pac. 722. The tax collector is not limited to an examination of the assessment roll to ascertain the last address of the property owner and the statute does not discourage additional efforts on his part to ascertain such information from other sources. Although technically the tax collector is under no obligation to look elsewhere to determine such

address, if he does ascertain it from other sources or if he has independent knowledge thereof (and such address is different from that appearing on the assessment roll) he is under a legal and moral obligation both under due process and the mandate of the statute to send the notice to the address which he knows or has ascertained to be the last address of the property owner. *Smith v. Furlong, supra; Wright v. Anglo-Californian Bank, supra; Krotzer v. Douglas, supra.*

In other words, once the tax collector has acertained the last address of the property owner, irrespective of the source of that information, he may not ignore or disregard that knowledge and rely solely on an address appearing on the assessment roll. To do so would not only violate the requirement of the statute that notice be sent to the "last known address" of the property owner, but more importantly it would defeat the specific purpose for which the notice provision was enacted, namely to provide the delinquent taxpayer with *personal notice* of the proposed sale of his property so that he might have a reasonable opportunity to redeem it. *Numitor Gold Mining Co. v. Katzer* (1927) 83 Cal. App. 161, 256 Pac. 264, 266.

In *Smith v. Furlong, supra,* the California Supreme Court recognized at page 528 that if "the tax collector had other information of a different address" from that which appeared on the assessment roll, he is required to send the notice of sale to such address. *Wright v. Anglo-Californian Bank, supra,* is to the same effect. In that case the bank was the party to whom the land was last assessed immediately prior to the tax sale. No notice was given to the bank. In challenging the sale and the tax deed issued thereunder, the bank contended

that "its address was then, is now, and for many years has been San Francisco, Cal." and further "that said address was well-known to said tax collector", and that therefore the tax collector's failure to give it notice rendered the sale void. The Court agreed and affirmed the judgment for the bank nullifying the sale.

In the *Krotzer* case, *supra*, the court held that where the tax collector, although not necessarily bound to do so, actually examines records other than the assessment roll to determine the last address of a property owner and as a result thereof ascertains such address, he is chargeable with that knowledge and must send the required notice to the address as ascertained by him. In emphasizing that the notice must be mailed to the "last known address" of the delinquent taxpayer, the court at page 723 stated that:

> ". . . a mailing to an address other than that designated by statute is no better than a want of any mailing . . ."

Common sense dictates that the notice must be sent to the last address of the delinquent taxpayer as ascertained by the tax collector. If the tax collector has such knowledge, he must then send the notice to the address either known to or ascertained by him from his investigation. Under either of these circumstances, any address appearing on the assessment roll which differs from his knowledge cannot legally or logically be classified as the "last known address" of the property owner and notice sent to such address is invalid as violative of due process.

Under the facts of this case, it is patently clear that the "last known address" of the petitioners as ascertained by the tax collector was their address in Los

Angeles—the address which appeared on the grant deed to the property, a copy of which was in the tax collector's file and which the tax collector reviewed and noted prior to the sale;—the address noted in red ink on the tax collector's records which were prepared by him for purposes of the sale;—the address listed for petitioners on the taxing officials' alphabetical listing of county property owners;—and the address reflected on the corrected 1969 assessment roll, which was physically in the tax collector's possession and of which he was admittedly aware.

The incorrect address appearing on the original assessment roll was inserted there solely through an error of the county taxing officials. Under the circumstances of this case, this address was not the last address of the petitioners known to the tax collector. This is especially true when you consider that over a period of seven years prior to the sale, the tax collector had actual knowledge that the Arizona address was not that of petitioners. In each year, his tax bill was sent to the Arizona address and returned to him and retained in his file. Moreover, it is conceded in this case that the tax collector had knowledge of petitioners' address in Los Angeles at least several months prior to the tax sale and that that address was different from that appearing on the assessment roll. Any lingering doubt about the inaccuracy of the Arizona address as that of petitioners was clearly dispelled when the notice sent to that address was promptly returned to the tax collector as undeliverable four days after it had been mailed. Likewise, any lingering doubt about the correctness of petitioners' Los Angeles address was clearly dispelled when ten days prior to the sale, the 1969 assessment roll was corrected by the assessor to reflect

the true address of the petitioneers. The Arizona address was lined out and petitioners' Los Angeles address was inserted in its place. When this correction was made, the assessment roll was physically in the possession of the tax collector and he conceded that he was immediately aware of the change. Under these circumstances, it is patently obvious that the "last known address" of the petitioners to the tax collector was their address in Los Angeles. Having ascertained that address as petitioners' last known address, it was incumbent upon the tax collector under due process and the statute to direct the notice of sale to petitioners at said address and by registered mail. It is conceded by the respondents that this was not done. The failure to give notice of the sale to the petitioners at their "last known address" renders the sale of their property and the tax deed issued thereunder void.

2. Under Due Process Notice Sought to Be Served by Mail Is Ineffective Until It Is Received by the One Sought to Be Served.

It is well settled that notice sought to be served by mail is not effective within the concepts of due process until it is received by the addressee. *Krotzer v. Douglas* (1912) 163 Cal. 49, 124 Pac. 722, 723; *Numitor Gold Mining Co. v. Katzer* (1927) 83 Cal.App. 161, 256 Pac. 464; *Benedict v. Andalman* (1970) 475 P.2d 953 (Ariz.); *Goodman v. Jones* (1967) 433 P.2d 980 (Ariz.); *General Factors, Inc. v. Beck* (1965) 409 P. 2d 40 (Ariz.)

The California Court of Appeal, however, did not address itself to this important constitutional concept. The court's failure to meet and discuss this issue is indeed one of the key factors justifying the granting of this petition.

In the *Krotzer* case, *supra*, the California Supreme Court declared at page 723 that:

> ". . . a mailing to an address other than that designated by the statute is no better than a want of any mailing, at least *where it appears, as it does here, that the notice did not in fact reach the person to whom it should have been sent.*" (Emphasis added.)

In *Numitor Gold Mining Co. v. Katzer, supra,* the court held at page 466 that:

> "The purpose of this mailing of notice is to afford *personal service* upon the owner . . . and enable him to redeem the property. . . .
>
> The service of this notice by mail is also jurisdictional, and, where it is returned prior to the sale *without having been delivered,* it is an insufficient service of notice, and a deed executed pursuant to such a defective notice is void." (Emphasis added.)

And in the recent tax case of *Benedict v. Andalman, supra,* decided less than two years ago, the court held at page 955 that:

> "A notice is a fundamental requirement of due process . . . *Notice sought to be served by mail is not effective until it is received by the one sought to be served.* (Numerous citations omitted)." (Emphasis added).

The notice sent to petitioners by registered mail at an incorrect address in Arizona was promptly returned to the tax collector as undeliverable and it was retained by him in his file to the date of trial. At no time did petitioners ever receive this notice. In view of this un-

contradicted fact, the conclusion is inescapable that this notice was totally ineffective as to petitioners and thus was insufficient to meet the requirements of due process.

The record also demonstrates that petitioner never received the so-called "courtesy" notices allegedly mailed to them at their correct address. Since due process and the statute contemplate "personal service" of notice upon the owner, failure to receive these notices renders them ineffective as to petitioners and any sale conducted pursuant to them is void.*

II.

NOTICE GIVEN ACCORDING TO STATUTORY RITUAL WILL NOT NECESSARILY MEET THE STANDARDS OF DUE PROCESS.

Assuming (without conceding) that the Court of Appeal's interpretation of Section 3701 is correct and that all the statute requires is the mailing of notice by registered mail to the owner *at the address appearing on the assessment roll*, irrespective of the tax collector's knowledge of the owner's true address as ascertained from other sources, then we respectfully submit that any such notice would of necessity be violative of due process under the circumstances of this case, first because it would not be calculated to convey to the owner the information contained in the notice and second, it would violate the purpose for which the notice provision was enacted, to wit: to afford the delinquent taxpayer *personal notice* of the tax sale so that he might have a reasonable opportunity to redeem his property. *Numitor Gold Mining Co. v. Katzer* (1927) 83 Cal.

*Neither the California Court of Appeal nor the respondents have contended that these notices met the constitutional and statutory requirements of notice.

App. 161, 256 Pac. 464, 466. This is particularly true in this case where the tax collector had knowledge of petitioners' correct address prior to the sale and knew that the address on the assessment roll was incorrect. Under these circumstances, the mailing of the notice to the petitioners at the incorrect address appearing on the assessment roll constituted a mere gesture, and was not notice reasonably calculated to apprise the petitioners of the information contained therein. It thus constituted inadequate notice under the concept of due process.

The leading case on adequacy of notice is *Mullane v. Central Hanover Bank* (1950) 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, which held that strict compliance with statutory notice procedures does not necessarily satisfy due process. This court held that before a person can be finally deprived of property rights, there must be notice given "reasonably calculated, under all the circumstances, to apprise interested parties" of the pendency of the proceedings.

The case involved notice by publication to the beneficiaries of a common trust fund. This Court held the notice sufficient as to *unknown* beneficiaries, but as to beneficiaries whose existence and whose whereabouts were known, the published notice violated due process.

The court stated:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (citations omitted). The notice must be of such

nature as reasonably to convey the required information. . . .

"But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." (at p. 657.)

The notice mailed to petitioners at the address appearing on the assessment roll was totally inadequate in this case because it was not reasonably calculated to reach the petitioners. This is particularly true where as here the tax collector had ascertained the correct address of the petitioners. Any notice directed to a known incorrect address, such as the one that appeared on the assessment roll, constitutes a mere gesture and is not due process.

In 1956, the U.S. Supreme Court reaffirmed the *Mullane* doctrine in *Walker v. City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178, and pointed out that the notice required to satisfy due process "will vary with circumstances and conditions." The *Walker* case involved a condemnation proceeding and notice of proceedings to determine plaintiff land owner's compensation was given by publication as authorized by the statute then in force. This Court held that the newspaper publication was not adequate to satisfy due process where the land owner's name and address were *known* to the condemning entity. The court relied on its decision in *Mullane* and said:

"That case establishes the rule that, if feasible, notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests. We

there called attention to the impossibility of setting up a rigid formula as to the kind of notice that must be given; notice required will vary with circumstances and conditions. We recognized that in some cases it might not be reasonably possible to give notice, for example, where people are missing or unknown.

"Measured by the principle stated in the *Mullane* case, we think that the notice by publication here falls short of the requirements of due process. It is common knowledge that mere newspaper publication rarely informs a landlord of proceedings against his property. In *Mullane* we pointed out many of the infirmities of such notice and emphasized the advantage of some kind of *personal notice* to interested parties. In the present case there seems to be no compelling or even persuasive reasons why such *direct notice* cannot be given." (Emphasis added.)

In the case at bar, there is no compelling or even persuasive reason why direct notice by registered mail could not have been given to petitioners of the impending sale of their property at their correct address which was known to the tax collector. The ritualistic mailing of notice to a known incorrect address appearing on the assessment roll is no substitute for "direct notice", especially where petitioners' true address was known to the tax collector.

The applicability of the *Mullane* doctrine to tax proceedings was upheld in *Schroeder v. City of New York* (1962) 371 U.S. 208, 83 S.Ct. 279; *Dohrmann Co. v. Security Savings and Loan Assn.* (1970) 80 Cal. App.3d 664, 87 Cal.Rptr. 792; and *Meadowbrook*

Manor, Inc. v. City of St. Louis Park, 104 N.W.2d 540 (Minn.).

In the *Schroeder* case, *supra*, this Court held that:

". . . [T]he requirement that parties be notified of proceedings affecting their legally protected interests is obviously a vital corollary to one of the most fundamental requisites of due process—the right to be heard. 'This right . . . has little reality or worth unless one is informed that the matter is pending and can chose for himself whether to appear or default, acquiesce or contest.' 339 U.S., at 314, 70 S.Ct., at 675." (at p. 282.)

In the recent California case of *Dohrmann Co. v. Security Savings and Loan Assn., supra*, the court in discussing the adequacy of notice of a tax sale by posting in three public places as provided by statute, stated:

"When conducting a proceeding which may result in the termination of a citizen's title to property, government denies due process of law to a known, interested party if it fails to give him adequate notice of its action. (numerous citations omitted) *Notice given according to statutory ritual will not necessarily meet due process standards:* '[t]he means [of notice] employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.' (Mullane v. Central Hanover Tr. Co., *supra*, 339 U.S. at p. 315, 70 S.Ct. at p. 657.) As to known persons with known addresses, '[e]xceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties.'" (Emphasis added.)

See also *Allen v. Flournoy* (1972) .... Cal.App.3d ...., 103 Cal.Rptr. 275.

Under the *Mullane* and *Dohrmann* doctrines, due process was denied petitioners by the very fact that the tax collector, with knowledge of their correct address, which address was different from that contained on the assessment roll, chose to follow the alleged statutory, but ineffectual and ritualistic practice of sending the registered notice to the known incorrect address appearing on the assessment roll. If the purpose of his action in doing so was to sell the property at a bargain price and thereby punish a delinquent property owner, such a course of conduct may be defensible. But if the purpose of the notice is to apprise the owner of the sale and to compel the payment of taxes, then his action is indefensible.

For reasons unknown to petitioners, the California Court of Appeal did not address itself to the constitutional principle enunciated by the authorities discussed above. The failure of the court to meet and discuss this important constitutional doctrine necessitates the granting of this petition.

Conclusion.

Notification is a fundamental requirement of due process. The failure of the government in this case to give petitioners adequate notice of the tax sale deprived them of their property without due process of law.

The purpose of notice in these cases is to apprise the owner of the pendency of the sale and afford him an opportunity to redeem his property. In the case at bar, this purpose was completely frustrated, as petitioners were never informed, formally or informally, that they could pay the back taxes and redeem their

property or that it would be sold for delinquent taxes. It would appear that the respondents in this case desire to perpetuate this frustration of purpose rather than to take steps to correct it. Only the State of California had the courage to recognize the gross injustice of what had occurred and true to its convictions it filed a disclaimer in favor of petitioners.

The decision of the California Court of Appeal fails to discuss the important due process considerations involved in this case. By failing to respond to these constitutional considerations, it has in essence sanctioned the taking of petitioners' property without due process of law. The granting of this petition is necessary to prevent this unjust result.

Because this matter is one of equity, petitioners have offered and continue to offer to pay to the parties legally entitled thereto all delinquent taxes, penalties, interest and other costs provided by law for the redemption of the subject property in conformance with the provisions of the California Revenue and Taxation Code.

For the reasons above stated, it is respectfully submitted that this Court grant the petition and reverse the judgment of the court below.

Respectfully submitted,

MIKE MAYO,
MESSRS. SIMON, SHERIDAN, MURPHY,
THORNTON & MEDVENE,
By JOHN D. CAHILL,
Attorneys for Petitioners.

APPENDIX A.

Opinion of the Court of Appeal.

Court of Appeal, Fourth District, Second Division, State of California.

Max Offenberg and Marie Offenberg, Plaintiffs and Appellants, v. The State of California, et al., Defendants and Respondents. 4 Civil 11634, (Sup. Ct. No. 150618).

Filed: May 31, 1972.

APPEAL from a judgment of the Superior Court of San Bernardino County. Vernon W. Hunt, Sr., Judge.* Judgment affirmed.

Simon, Sheridan, Murphy, Thornton & Medvene, John D. Cahill and Mike Mayo, for Plaintiffs and Appellants.

Stanford D. Herlick, County Counsel, and Robert W. Walker, Deputy County Counsel, for Defendants and Respondents County of San Bernardino and G. Leon Gregory, Tax Collector.

Fullerton & Morris and Robert S. Morris, for Defendants and Respondents Orville K. Doyle and Leona M. Doyle.

BY THE COURT

Appellants, plaintiffs below, are Dr. Max Offenberg and his wife Marie.

During January 1963 appellants purchased real property at Big Bear in San Bernardino County. The property was assessed for real property taxes as two separate adjoining parcels. The parcel that concerns us here is a 100 by 165 foot lot improved by construction of a

*Retired judge assigned by the Chairman of the Judicial Council.

substantial mountain cabin. The second parcel was unimproved.

A real property tax was levied on the Big Bear property, attaching as a lien as of noon on the first Monday in March 1963 (Rev. & Tax. Code, § 2192). The tax on the mountain cabin parcel was never paid. On June 30, 1964, the property was sold to the state (Rev. & Tax. Code, § 3436). On July 3, 1969, the tax collector executed a deed conveying the property to the state (Rev. & Tax. Code, § 3511). The tax collector gave notice of intended sale of tax-deeded property pursuant to section 3701 of the Revenue and Taxation Code, which reads as follows:

> "After receiving the written authorization of the Controller and not less than 21 nor more than 28 days, before the proposed sale, the tax collector shall send a notice by registered mail of the intended sale to the last assessee of each portion of the property at his last known address. To ascertain the address of the last assessee of the tax-deeded property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll."

Notice of intended sale was published in the county seat and in the judicial district in which the property is situated (Rev. & Tax. Code, §§ 3702, 3704). On January 20, 1970, the mountain cabin parcel was sold at public auction to Orville and Leona Doyle, the highest bidders (Rev. & Tax. Code, § 3706). On receiving the full purchase price the tax collector executed a deed to the purchasers (Rev. & Tax. Code, § 3708). The unimproved parcel adjoining the mountain cabin parcel

was not sold at the public auction, having been earlier withdrawn from sale for reasons discussed below.

Respondents Doyle wrote appellants that they had taken possession of the cabin and requested appellants to remove their personal property therefrom. This lawsuit followed.

On February 16, 1970, appellants filed a "Complaint to cancel tax deed; quiet title; forcible entry; and conversion," naming as defendants the State of California, the County of San Bernardino, the county tax collector, and the Doyles. The state filed a disclaimer. The county and the tax collector answered. The Doyles answered and cross-complained to quiet their title against the appellants. The matter was tried to the court. Findings of fact and conclusions of law were made and judgment was given that appellants take nothing by their complaint and that title to the property be quieted in the Doyles, from which judgment this appeal is taken.

It appeared at the trial that the 1963 tax bill and all subsequent bills were sent to appellants at a Yuma, Arizona address. This address appears in the record as the address of the person from whom appellant purchased the property and is likewise the address given for the assessees of the mountain cabin parcel appearing on each assessment roll from 1963 onward. The original deed to appellants included an instruction in the upper lefthand corner that after recording, the deed should be mailed to "Mr. and Mrs. Max Offenberg, 127 Utah Street, Los Angeles, California." As part of the routine preliminaries to the public auction, the tax collector prepared a "tax sale search sheet" which noted the Los Angeles address. At the same time the tax collector sent the notice of intended sale to the Yuma

address by registered mail, he sent a "courtesy notice" to the Los Angeles address by regular mail.

The Los Angeles address was the location of a hospital formerly owned by Dr. Offenberg. Dr. Offenberg had sold the hospital in October 1969, at which time he requested the post office to forward any mail. The notice sent to Los Angeles never reached appellants. The notice sent to Yuma was returned marked "Moved —left no address."

It also appeared at the trial that appellants were knowledgeable in real estate matters, as evidenced by their ownership of approximately eight parcels of real property in Los Angeles County and other real property at Hesperia in San Bernardino County. Mrs. Offenberg testified that she did not receive a tax bill for 1963 or any subsequent year on the Big Bear property. She was aware of the necessity of keeping the tax authorities advised of a current address since during December 1969, in respect to the Hesperia property only, she notified the San Bernardino County Tax Assessor to discontinue sending the tax bills to the Los Angeles address and to send them to a Montebello residence address. Although Dr. Offenberg testified that he relied on his auditors to "take care of all the taxes and so forth," the record permits the inference that appellants failed to pay the taxes because they believed that the property had escaped assessment.

To begin, the deed to the state transfers title to the state the same in effect as a voluntary grant (*Sears v. County of Calaveras*, 45 Cal.2d 518, 522), leaving the former owner with a statutory right of redemption only (Rev. & Tax. Code, § 4101). On completion of the sale after the deed to the state, the right of redemp-

tion is terminated (Rev. & Tax. Code, § 3707). There is no constitutional right of redemption, which comes entirely from the statute and is subject to all the limitations and conditions therein imposed (*Peterson v. Johnson*, 39 Cal.2d 745, 748). The Legislature might have adopted a scheme of disposing of tax-deeded property without notice given to the delinquent taxpayer of intention to do so (*Smith v. Furlong*, 160 Cal. 522, 529). As it is the statute does require notice both by mail and by publication. There was substantial evidence that the requirements of the statute concerning notice were fully complied with.

The trial court found against appellants on the allegation that when the tax collector noted the Los Angeles address he "discovered the true address" of the appellants, and was accordingly obliged to give notice to appellants to the Los Angeles address by registered mail.

According to the evidence, the tax collector processed the sale routinely, and did not know whether the Los Angeles address was a correct address or not. This fact could have been determined only by further investigation, which duty the Legislature has not imposed upon the tax collector. The "courtesy notice" was nothing more than the name implies, that is, a voluntary extra effort on the part of the tax collector for the benefit of the delinquent taxpayer. The statutory scheme places the burden on the tax collector to ascertain the address of the last assessee of the tax-deeded property sought to be sold by "an examination . . . made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll." (Rev. & Tax. Code, § 3701). The assessment of the mountain cabin

parcel on the 1963-1969 rolls placed in evidence gives the Yuma address for appellants. Notice given to the Yuma address by registered mail constituted full compliance with the law.

Also concerning the notice by mail, appellants placed in evidence the 1969 assessment roll entry for the unimproved parcel adjoining the mountain cabin parcel which was listed separately in the rolls from the mountain cabin parcel. As to this entry, a handwritten notation was made by someone in the tax assessor's office on January 10, 1970, ten days before the date set for the tax sale of the mountain cabin parcel, lining through the Yuma address and setting out the Los Angeles address. This moved the tax collector to send a second notice by regular mail to the Los Angeles address. The following explanation was given: "We make every effort to notify the taxpayer, and if one attempt fails, we'll make a second try. [¶] When I found the additional assessee's lot, I sent the second letter." Appellants contend that upon observing the notation of the Los Angeles address on the assessment roll entry for the unimproved parcel, the tax collector should have withdrawn the mountain cabin parcel from sale. Nothing in the Revenue and Taxation Code would compel this result. The notation did not constitute any better evidence than the tax collector already had on hand for purposes of the mailed notice relating to the mountain cabin parcel, which was given in the manner already set forth.

Appellant argues that the published notice was defective. No issue was raised by the pleadings in this regard. Nevertheless the record has been examined and it reveals that the mountain cabin parcel was correctly

described in all notices given. The unimproved parcel was not included in the notice published in the judicial district in which the property is situated, and this is the apparent reason why it was withdrawn from sale. Using appellants' own cited standard, "the object of the statute is to notify the owner that the taxes thereon are delinquent . . . and the description of the lot must be sufficient to give such notice." The purpose of the statutory notice concerning the mountain cabin parcel was thus achieved.

Since the Doyles have good title to the property, the issues concerning forcible entry and unlawful detainer drop out of the case. As far as the question of conversion is concerned, there was substantial evidence that the Doyles asserted no ownership of appellants' personal property found in the cabin; there was no evidence that the Doyles exercised any wrongful dominion over such property. Any incidental use of appellants' property was attributable to the fact that appellants failed to honor the request to remove the same.

The judgment is affirmed.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 26 1972

DEAR SIR: *I have this day filed Order*

WARREN BISHEL

In re: 4 Civ. No. 11634

Offenberg

vs.

State of California
Co. of San Bernardino

Respectfully,

G. E. BISHEL
Clerk